

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

and

NATALYA PRACH, IVAN KRIGER,  
ANDREY SAMOLOVOV, AND ANATOLIY  
TSIRIBKO, and NORTHWEST FAIR  
HOUSING ALLIANCE,

Plaintiffs-  
Intervenors,

v.

BOWEN PROPERTY MANAGEMENT,  
SPOKANE HOUSING AUTHORITY,  
WESTFALL VILLAGE APARTMENTS,  
L.P., JOHN BALLAS, AND KERREY  
LEMONS,

Defendants.

NO. CV-03-0250-EFS

**ORDER DENYING BOWEN PROPERTY  
MANAGEMENT'S MOTION FOR  
SUMMARY JUDGMENT AND  
GOVERNMENT'S MOTION TO  
STRIKE AND REQUIRING PARTIES  
TO PARTICIPATE IN  
ALTERNATIVE DISPUTE  
RESOLUTION**

A telephonic hearing was held in the above-captioned case on June 28, 2005. Avery Johnson and Bert Daughtery appeared on behalf of the United States; Jeffry Finer appeared on behalf of Natalya Prach; Chris Grimes appeared on behalf of the other Plaintiffs-Intervenors; Julian St. Marie appeared on behalf of the Northwest Fair Housing Alliance; Michael Parker appeared on behalf of Kerrey Lemons; and Eric Steven

1 appeared on behalf of Bowen Property Management and John Ballas. Before  
2 the Court were Defendant Bowen Property Management's Motion for Summary  
3 Judgment, (Ct. Rec. 162), and Plaintiff United States' Motion to Strike  
4 Defendant Bowen Property Management's Reply Memorandum in Support of  
5 Motion for Summary Judgment or, Alternatively, for Leave to File  
6 Surreply, (Ct. Rec. 196). After reviewing the submitted material and  
7 applicable statutory and case law and taking oral argument, the Court  
8 is fully informed. This Order serves to supplement and memorialize the  
9 Court's oral denial of both the Defendant's and United States' motions.

10 **I. DEFENDANT BOWEN PROPERTY MANAGEMENT'S MOTION FOR SUMMARY JUDGMENT**

11 Defendant Bowen Property Management ("Bowen") seeks an order  
12 granting summary judgment in its favor on the grounds that no genuine  
13 triable issues of material fact exist because the facts show (1) Kerrey  
14 Lemons was acting outside the scope of her employment and thus Bowen is  
15 not vicariously liable, (2) the intent of the Fair Housing Act would be  
16 frustrated if Natalia Prach, Ivan Kriger, Andrey Samolovov, and Anatoliy  
17 Tsiribko were allowed to proceed as Congress did not intend to protect  
18 illegal conduct under the Fair Housing Act, and (3) Anatoliy Tsiribko  
19 cannot maintain his action because he did nothing to secure rights under  
20 the Fair Housing Act. Natalya Prach filed an opposition to the motion,<sup>1</sup>  
21 to which the Northwest Fair Housing Alliance joined. In addition,  
22 Plaintiffs-Intervenors Mr. Kriger, Mr. Samolovov, and Mr. Tsiribko  
23 (hereinafter referred to as "Plaintiffs-Intervenors" filed an  
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26 <sup>1</sup> At the hearing, Bowen withdrew its request to strike Ms. Prach's  
opposition as untimely.

1 opposition.<sup>2</sup> The United States also filed an opposition. Following,  
2 Bowen filed two replies; in response to the second reply, the United  
3 States filed a Motion to Strike Bowen's second reply.<sup>3</sup>

4 **A. Statement of Uncontroverted Facts<sup>4</sup>**

5 Bowen is an Oregon corporation doing business in the State of  
6 Washington. Bowen managed the Westfall Village Apartments ("Westfall  
7 Village"), located at 3724 N. Cook Street in Spokane, Washington, from  
8 their initial rent-up in mid-1997 through June 2002.<sup>5</sup> During the time  
9 period relevant to this action, Defendant John Ballas was the vice  
10 president and general manager of operations for Bowen. Defendant Kerrey  
11 Lemons was employed by Bowen as the rental manager at Westfall Village

12 \_\_\_\_\_  
13 <sup>2</sup> At the hearing, Bowen withdrew its request to strike Ms. Prach's  
14 opposition as untimely.

15 <sup>3</sup> The Court finds it unnecessary to strike Bowen's reply and  
16 determines additional briefing is unnecessary as the issues are fully  
17 before the Court.

18 <sup>4</sup> The Statement of Uncontroverted Facts was agreed to by the  
19 parties, (Ct. Rec. 203). Given that the parties' jointly agree as to  
20 these facts, and the Court finds that such material facts exist without  
21 substantial controversy, such facts are deemed established under Federal  
22 Rule of Civil Procedure 56(d).

23 <sup>5</sup> The Spokane Housing Authority did not renew or extend its  
24 contract with Bowen to manage the Westfall Village Apartments when it  
25 expired in June 2002. The apartments at Westfall Village are dwellings  
26 within the meaning of 42 U.S.C. § 3602(b).

1 from April 1997 through June 2002. Mr. Ballas was one of Ms. Lemons'  
2 supervisors during the time period relevant to this action. Mr. Ballas  
3 visited Westfall Village periodically and met on occasion with Ms.  
4 Lemons to review the operation of the apartments.

5 As the rental manager, Ms. Lemons' responsibilities included, but  
6 were not limited to, reviewing rental applications and submitting  
7 applications for tenancy to Bowen for final approval, as well as  
8 accepting and depositing payments for application fees, deposits, and  
9 rent. In or around September 1999, Natalya Prach, a tenant at Westfall  
10 Village, began working for Bowen at Westfall Village. Ms. Prach is of  
11 Russian national origin. She speaks Russian and also speaks English to  
12 some degree. Kerrey Lemons was Ms. Prach's on-site supervisor. Ms.  
13 Prach's compensation as assistant manager was made in part in the form  
14 of a credit against her monthly rent at Westfall Village.

15 On or about May 30, 2000, Ms. Prach called John Ballas and alleged  
16 that Ms. Lemons was soliciting and obtaining additional fees from  
17 Russian applicants and tenants in exchange for giving them apartments  
18 over other applicants. Mr. Ballas informed Ms. Lemons of Ms. Prach's  
19 allegations by telephone. Ms. Prach contacted Mr. Ballas again by  
20 telephone on May 31, 2000, and retracted her prior allegations about Ms.  
21 Lemons. On May 31, 2000, there was a meeting at Westfall Village which  
22 the following persons attended: Natalya Prach, Ivan Kriger,<sup>6</sup> Andrey  
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25 <sup>6</sup> Plaintiff-Intervenor Ivan Kriger is of Russian national origin  
26 and speaks Russian and English. Mr. Kriger has never been a resident at  
Westfall Village.

1 Samolovov,<sup>7</sup> Anatoliy Tsiribko,<sup>8</sup> Llyudmila Greben, Irena Greben, Kerrey  
2 Lemons, and Glen Lemons. On June 1, 2000, Ms. Prach again called Mr.  
3 Ballas and told him that the allegations she made against Ms. Lemons in  
4 her first call to him on May 30 were true.

5 Mr. Ballas kept his superiors at Bowen informed of the events that  
6 occurred from May 30 through June 1, 2000, as they occurred during those  
7 three days, and discussed with them what action, if any, Bowen should  
8 take. Soon after June 1, 2000, Mr. Ballas authorized a notice of  
9 termination of tenancy to be issued to Ms. Prach. In June, 2000, the  
10 Northwest Fair Housing Alliance<sup>9</sup> (NWFHA) received complaints from Ms.  
11 Prach and others alleging that the Defendants had violated the Fair  
12 Housing Act by discriminating on the basis of national origin -  
13 specifically, that Ms. Lemons charged persons of Russian origin special  
14 "fees" to process their application for new housing and for transfers.

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16 <sup>7</sup> Plaintiff-Intervenor Andrey Samolovov is of Russian national  
17 origin and speaks Russian and some English. Mr. Samolovov has never been  
18 a resident at Westfall Village.

19 <sup>8</sup> Plaintiff-Intervenor Anatoliy Tsiribko is of Russian national  
20 origin and speaks Russian and some English. During the relevant time  
21 period, Mr. Tsiribko lived with Ms. Prach at Westfall Village.

22 <sup>9</sup> NWFHA is a non-profit organization whose purpose is to ensure  
23 equal housing opportunity for the people of Eastern Washington through  
24 education, counseling, and advocacy. NWFHA's mission included  
25 investigating and responding to complaints relating to violations of the  
26 Fair Housing Act.

1 NWFHA helped Ms. Prach and other Russian nationals including Vera  
2 Filipenko, Irina and Vladimir Greben, and Mikhail and Nadya Azarov file  
3 complaints of housing discrimination with the United States Department  
4 of Housing and Urban Development (HUD) on or around July 11 and 13,  
5 2000.

6 Ms. Prach and Plaintiff-Intervenors Ivan Kriger, Andrey Samolovov,  
7 and Anatoliy Tsiribko were arrested on or about September 6, 2000.  
8 These individuals were jailed for one day after their arrest and  
9 subsequently pled guilty to misdemeanor disorderly conduct and were  
10 sentenced to one year probation.

11 Bowen retained Ms. Lemons as a resident manager at Westfall Village  
12 until June 2002 when its management responsibilities there ended. After  
13 leaving Westfall Village, Ms. Lemons has remained employed by Bowen in  
14 other capacities continuously to this date.

15 **B. Applicable Law & Analysis<sup>10</sup>**

16 1. Bowen's Liability: Direct or Vicarious

17 Bowen maintains it is not directly or vicariously liable because  
18 Ms. Lemons' alleged wrongful acts were outside the scope of her  
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20 <sup>10</sup> The Court grants the United States and Plaintiffs-Intervenors'  
21 request to strike the Declaration of Pat Youngren because it contains  
22 inadmissible hearsay. The material on the bottom half of page 2 to the  
23 top half of page 3 is STRICKEN pursuant to Federal Rule of Civil  
24 Procedure 56(e) because Ms. Young does not have first-hand knowledge of  
25 the telephone calls or the May 31, 2000, meeting.  
26

1 employment. The Court agrees with Plaintiffs and finds genuine issues  
2 of material fact exist as to whether Bowen is directly and/or  
3 vicariously liable for Mr. Ballas' or Ms. Lemons' alleged wrongful acts.

4 a. *Direct Liability*

5 The Fair Housing Act, which was enacted to insure that people who  
6 historically suffered from discrimination in the housing markets to have  
7 an equal opportunity to housing, does not statutorily define the scope  
8 of a principal's liability. *People Helpers, Inc. v. City of Richmond*,  
9 789 F. Supp. 725, 731 (E.D. Va. 1992). However, the parties agree that  
10 traditional principles of agency law are to be applied to the Fair  
11 Housing Act. See *Meyer v. Holley*, 537 U.S. 280, 285-86 (2003); *Faragher*  
12 *v. City of Boca Raton*, 524 U.S. 775, 793 (1998); RESTATEMENT (SECOND) AGENCY  
13 §§ 219(1)-(2) & 228.

14 Initially, the Court notes there is no evidence supporting a  
15 finding that Bowen is directly liable for taking the alleged bribes.  
16 However, the Court finds a genuine issue of material fact exists as to  
17 whether Mr. Ballas, a principal of Bowen, engaged in conduct under 42  
18 U.S.C. § 3617:

19 It shall be unlawful to coerce, intimidate, threaten or  
20 interfere with any person in the exercise or enjoyment of, or  
21 on the account of his having aided or encouraged any other  
22 person in the exercise or enjoyment of, any right granted  
23 under or protected by §§ 3603, 3604, 3605 or 3606 of this  
24 Title.

25 Mr. Ballas stated at his deposition he had heard from Mr. Zarebelov, a  
26 Bowen employee who spoke Russian, that two residents agreed with Ms.  
Prach's version of the story. (Ballas Dep. pp. 63-68 & 73-74.) However,  
without researching these accounts further, or providing the police with  
this information, Mr. Ballas decided to terminate Ms. Prach's employment

1 prior to the police finishing its investigation. *Id.* pp. 95-98, 119-  
2 136, & 189. Then, when the police decided not to pursue the  
3 investigation further, Mr. Ballas agreed to have a notice of eviction  
4 served on Ms. Prach. (Prach Decl. ¶ 18; Lemons Dep. p. 331.)  
5 Accordingly, the Court finds a question of fact for the jury exists as  
6 to whether Mr. Ballas' intimidated, threatened, or interfered with Ms.  
7 Prach's alleged attempts to prevent FHA violations, thereby making Bowen  
8 directly liable.<sup>11</sup>

9 *b. Vicarious Liability*

10 The Court concludes Plaintiffs presented sufficient evidence to  
11 show that Bowen may be vicariously liable for Ms. Lemons' alleged  
12 bribery. Agency authority can be expressed, implied, or apparent; yet,  
13 the parties disagreement is centered on whether Ms. Lemons had implied  
14 or apparent authority and whether Bowen should be responsible even if  
15 Ms. Lemons acted outside the scope of her employment.

16 Implied authority generally exists when conduct is done within the  
17 course and scope of employment. *Faragher v. City of Boca Raton*, 524  
18 U.S. 775, 793 (1998) (citing to RESTATEMENT (SECOND) AGENCY § 219(1).  
19 "Within the course and scope of employment" means: (1) the conduct  
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21 <sup>11</sup> Bowen also maintains it cannot be held liable for any damages  
22 associated with Ms. Prach and Mr. Tsiribko moving out of the Westfall  
23 Village because Bowen was not a party to the Plea Agreements. However,  
24 the Court finds this argument fails to recognize that Bowen served an  
25 eviction notice on Ms. Prach approximately one year before these  
26 individuals entered into a Plea Agreement.



1 occurred substantially within the authorized employment time and space  
2 limits; (2) the employee was motivated, at least in part, by a purpose  
3 to serve the employer; and (3) the act was of a kind that the employee  
4 was hired to perform. RESTATEMENT (SECOND) AGENCY § 228. "Apparent  
5 authority arises from the principal's manifestations to a third party  
6 that supplies a reasonable basis for that party to believe that the  
7 principal has authorized the alleged agent to do the act in question."  
8 *Id.* at 1099. The existence of an agency relationship and the scope of  
9 the agent's authority is a question of fact and should not be decided  
10 on summary judgment, unless only one conclusion can be drawn. *C.A.R.*  
11 *Transp. Brokerage Co., Inc. v. Darden Rests., Inc.*, 213 F.3d 474 (9th  
12 Cir. 2000). Restatement (Second) of Agency § 219(2) provides:

13 A master is not subject to liability for torts of his  
14 servants acting outside the scope of their employment,  
unless:

- 15 (a) the master intended the conduct or the consequences, or  
16 (b) the master was negligent or reckless, or  
17 (c) the conduct violated a non-delegable duty of the master,  
or  
18 (d) the servant purported to act or to speak on behalf of the  
principal and there was reliance upon apparent authority, or  
he was aided in accomplishing the tort by the existence of  
the agency relationship.

19 See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 756 (1998).

20 Accepting cash bribes was not one of Ms. Lemons' listed  
21 responsibilities. Yet, the parties did jointly agree Ms. Lemons was  
22 responsible for accepting new applications, reviewing them, and  
23 submitting applications to Bowen for final approval, as well accepting  
24 and depositing application fees, deposits, and rent. (Ct. Rec. 203 ¶ 9.)  
25 Due to these money-related and tenancy-selection responsibilities, the  
26 Court finds a genuine issue of material facts exists as to whether

1 primarily Russian-speaking individuals would reasonably know it was not  
2 within Ms. Lemons' scope of employment, and/or within her apparent  
3 authority, to accept additional cash fees, especially in light of Ms.  
4 Lemons' acknowledgment at her deposition that she had accepted cash for  
5 legitimate rental costs, in violation of the sign alleged posted "OUR  
6 POLICY IS THAT WE DO NOT ACCEPT CASH FOR PAYMENT."<sup>12</sup> For these reasons,  
7 the Court concludes the jury should determine whether such conduct was  
8 within Ms. Lemons' scope of employment, whether Ms. Lemons purported to  
9 act on behalf of Bowen and whether the alleged payers of these payments  
10 relied upon this apparent authority, whether Ms. Lemons was aided by the  
11 existence of the agency relationship, and whether Bowen was benefitted  
12 by Ms. Lemons' conduct.

13 In its defense, Bowen at trial will have an opportunity to present  
14 evidence that it "exercised reasonable care" to avoid such unlawful  
15 payments and to "eliminate it when it might occur" and discuss whether  
16 the Plaintiffs' conduct was reasonable See *Faragher*, 524 F.2d at 805  
17 (establishing such an affirmative defense in the context of Title VII);  
18 *Congdon v. Strine*, 854 F. Supp. 355 (E.D. Penn. 1994).

19 For the reasons given above, the Court finds the jury is to  
20 determine whether Bowen is directly liable for the termination and  
21 eviction notice and/or vicariously liable for Ms. Lemons' alleged  
22 wrongdoings. Accordingly, the Court denies Bowen's motion in part.

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25 <sup>12</sup> The Court highlights Mr. Ballas did not state whether this sign  
26 was posted in a visible place during the relevant time period and/or  
whether a Russian interpretation was provided.

1        2.    Protecting Illegal Conduct

2           Bowen submits allowing Plaintiffs to proceed in this matter and  
3 recover for engaging in illegal conduct will frustrate the policy and  
4 purpose of the Fair Housing Act because Plaintiffs' underlying conduct  
5 was illegal as is evidenced by Plaintiffs' disorderly conduct guilty  
6 pleas, citing to *Barlow v. Evans*, 993 F. Supp. 1390 (C.D. Utah 1997).  
7 The Court finds *Barlow* is distinguishable.

8           The district court in *Barlow* determined that a buyer practicing  
9 polygamy did not have standing to assert a violation of the Fair Housing  
10 Act when a seller decided not to sell a particular parcel to the buyer  
11 due to the buyer's polygamy practice. The district court reached this  
12 conclusion after observing that the Fair Housing Act's purpose was not  
13 to assist in engaging in criminal behavior and the First Amendment does  
14 not provide religious protection to polygamy practices.

15           The Court agrees the Fair Housing Act's purpose is not to aid or  
16 abet criminal behavior. However, unlike *Barlow*, the Plaintiffs'  
17 misdemeanor conviction for disorderly conduct is separate and distinct  
18 from Ms. Lemons' alleged acceptance of bribes, the termination of Ms.  
19 Prach's employment, and the eviction notice sent to Ms. Prach. The  
20 alleged bribes were received prior to May 30, 2000. Even though the  
21 disorderly conduct guilty pleas may have been based on, in part, the  
22 individuals' conduct at the May 30, 2000, meeting, the termination of  
23 Ms. Prach was, according to Mr. Ballas, due to her inconsistent stories  
24 and not based on her conduct at that meeting as he was not present for  
25 such. (Ballas Dep. pp. 95-87 & 119-136.) Furthermore, the eviction  
26 notice was reportedly related to her termination as she was no longer

1 receiving rent credit for her work hours. (Prach Decl. ¶ 18; Lemons  
2 Dep. p. 331.) Accordingly, the Court finds Plaintiffs are not seeking  
3 to promote disorderly conduct, but rather seek to redress unfair housing  
4 practices against Russian immigrants and the steps taken by Defendants  
5 to suppress the Plaintiff-Intervenors protected activities. See *People*  
6 *Helpers, Inc. v. City of Richmond*, 789 F. Supp. 725 (E.D. Va. 1992).  
7 For these reasons, the Court denies Bowen's motion in part.

8 3. Anatoliy Tsiribko

9 Lastly, Bowen argues Mr. Tsiribko cannot maintain an action because  
10 he did not secure his rights under the Fair Housing Act because he  
11 admitted during his deposition that he did not talk to anyone or pay  
12 money. At his deposition, in response to the question of "[w]hat  
13 specific things did you do to help tenants at Westfall Village recover  
14 their extra money paid to Kerrey Lemons?," (Tsiribko Dep. p. 61), Mr.  
15 Tsiribko responded, "[e]verything that I did I signed that I was  
16 against. I did not talk to anyone and I did not go with anyone. I went  
17 to jail. Can you imagine what would have been if I would have done  
18 something?" *Id.* at 61-62.

19 At the deposition, counsel for Mr. Tsiribko objected to this  
20 question as calling for a legal conclusion. Mr. Tsiribko speaks Russian  
21 primarily and thus an interpreter was used at the deposition. The Court  
22 concludes this statement does not dispose of Mr. Tsiribko's claims,  
23 given the difficulty in ascertaining the specific meaning of answers  
24 given at depositions where an interpreter is used and follow-up  
25 questions on this issue were not asked. Furthermore, the undisputed  
26 evidence establishes Mr. Tsiribko was present at the May 30, 2000,

1 meeting. Accordingly, if the jury believes Plaintiffs' version of the  
2 facts that the purpose of this meeting was to advise Ms. Lemons that she  
3 needed to return the bribe money, then the jury could find that Ms.  
4 Lemons instigated an investigation to "coerce, intimidate, threaten or  
5 interfere with any person in the exercise or enjoyment of, or on the  
6 account of his having aided or encouraged any other person in the  
7 exercise or enjoyment of, any right granted under or protected by [the  
8 Fair Housing Act]." This investigation led to criminal charges against  
9 Mr. Tsiribko. Accordingly, the Court denies Bowen's motion in part.

10 4. Conclusion

11 The Court denies Bowen's Motion for Summary Judgment, finding  
12 genuine issues of material fact exist as to whether Bowen is directly  
13 liable for Mr. Ballas' conduct and/or indirectly liable for Ms. Lemons'  
14 alleged unlawful conduct. Accordingly, the Court denies Bowen's request  
15 for attorney fees and costs as well.

16 For the reasons given above, **IT IS HEREBY ORDERED:**

17 1. Plaintiff United States' Motion to Expedite their Motion to  
18 Strike Defendant Bowen Property Management's Reply Memorandum in Support  
19 of Motion for Summary Judgment or, Alternatively, for Leave to File  
20 Surreply (**Ct. Rec. 189**), is **GRANTED**.

21 2. Defendant's Bowen Property Management's Motion for Summary  
22 Judgment, (**Ct. Rec. 162**), is **DENIED**.

23 3. Plaintiff United States' Motion to Strike Defendant Bowen  
24 Property Management's Reply Memorandum in Support of Motion for Summary  
25 Judgment or, Alternatively, for Leave to File Surreply, (**Ct. Rec. 196**),  
26 is **DENIED**.

**IT IS SO ORDERED.** The District Court Executive is directed to:

- DATED** this 15th day of August, 2005.

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